

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

TERRELL YOUNG,
v.
BACA, et al.,

Case No. 3:17-cv-00118-HDM-CLB

Petitioner,

ORDER

Respondents.

9 This counseled habeas petition pursuant to 28 U.S.C. § 2254
10 comes before the court for consideration of the surviving claim of
11 petitioner Terrell Young's ("Young") second amended petition. (ECF
12 No. 32). Respondents have answered (ECF No. 73), and Young has
13 replied (ECF No. 76).

14 In addition, Young has filed a motion for evidentiary hearing
15 to develop his claim of equitable tolling. (ECF No. 77).
16 Respondents have opposed (ECF No. 78), and Young has replied (ECF
17 No. 82).

18 I. Factual and Procedural Background

19 Young challenges his 2006 state court judgment of conviction,
20 following a jury trial at which he represented himself, of four
21 counts of murder in the first degree with use of a deadly weapon
22 and ten other associated counts, including kidnapping, burglary,
23 robbery, and conspiracy to commit murder. (Ex. 287).¹

26 ¹ The court cites primarily to respondents' set of exhibits, which are
27 located at ECF Nos. 45-56, 69 and 70. ECF No. 69 is a corrected image
28 of Exhibit 273. The court cites to these documents by exhibit number.
The transcripts of Young's interviews with investigators on September
2, 1998, were filed by respondents separately at ECF No. 80. The court
refers to these documents by their docket number.

1 On August 14, 1998, Matt Mowen, Tracey Gorringe, Jeff Biddle,
2 and Peter Talamantez were found murdered in a home on Terra Linda
3 Avenue in Las Vegas, Nevada. Donte Johnson, Sikia Smith, and Young
4 were investigated as suspects.

5 On September 2, 1998, Young was arrested and questioned. After
6 several hours of questioning, Young confessed to participating in
7 the quadruple murders.

8 Young was charged with fourteen counts, including four counts
9 of first degree murder with use of a deadly weapon, four counts of
10 first degree kidnapping with use of a deadly weapon, four counts
11 of robbery with use of a deadly weapon, one count of conspiracy to
12 commit robbery and/or kidnapping and/or murder, and one count of
13 burglary while in possession of a firearm. (Ex. 7).

14 Young was convicted on all counts in 1999. (Ex. 72). His
15 conviction, however, was reversed by the Nevada Supreme Court in
16 2004, on the grounds that the trial court had abused its discretion
17 in refusing to grant Young's motion to dismiss counsel and appoint
18 new counsel. The case was remanded for a new trial. (Ex. 149).

19 Before the second trial commenced, Young moved to represent
20 himself. (Ex. 163). The trial court held a hearing, canvassed
21 Young, and then granted his request. (Ex. 166). Standby counsel
22 was appointed. (Ex. 184).

23 Among several other motions filed by Young in proper person
24 was a motion to suppress his confession. (Exs. 176 & 198). The
25 court conducted an evidentiary hearing. (Exs. 253-55). Testimony
26 and evidence at the hearing established the following.

27 On September 2, 1998, Sergeant Hefner spotted Young walking
28 in front of the police station. Hefner, Detective Thowsen and

1 Detective Buczek approached Young as he stood at a bus stop. As
2 they asked Young to identify himself and reached out to detain
3 him, Young began to run. A scuffle ensued, involving all three
4 officers and Young, which spilled at one point into the busy
5 street. The officers were eventually able to restrain Young and
6 handcuff him to the bench. Young was then brought into the station
7 and placed in an interview room. (Ex. 255 (49-51)).

8 In the interview room, Detective Buczek read Young his *Miranda*
9 rights and, at 11:50 a.m., Young signed a card acknowledging he
10 understood those rights. (Ex. 225 (Tr. 51-54)). Buczek advised
11 Young that by signing the card, Young was acknowledging that the
12 card was read to him. (Ex. 255 (Tr. 68-71)).

13 From 12:22 p.m. to 12:53 p.m., a recorded interview took
14 place. (ECF NO. 80-1). During the interview, conducted by Buczek
15 and at which Thowsen was present, Young denied any involvement in
16 the murders. (*Id.* at 14-15, 20).²

17 Shortly after, Detectives Hardy, Chandler and, at times,
18 Thowsen, questioned Young about an unrelated murder. Some
19 questions touched on the quadruple murders, as well. They spoke
20 unrecorded for less than an hour, then at 2 p.m., the recorder was
21 turned on. (Ex. 254 (Tr. 24-25); ECF No. 80-2). Young was asked if
22 he remembered being advised of his *Miranda* rights by Detective
23 Thowsen. Young acknowledged he had been advised of his rights but
24

25

26 ² There has been no assertion in these proceedings that the transcripts
27 do not accurately reflect the content of the recorded interviews. The
28 trial court and Young's attorney in his first trial both listened to the
recordings and concluded the transcripts were faithful transcriptions
of the audible portions of the recordings. (Ex. 255 (Tr. 30-31); Ex.
266).

1 indicated it was Buczek who had advised him. (ECF No. 80-2 at 3;
2 Ex. 254 (Tr. 26)).

3 In the recorded second interview, Young continued to deny any
4 involvement in the quadruple murders. (See, e.g., ECF No. 80-2 at
5 68-69). The interview ended when Young requested that the tape be
6 turned off so he could discuss with the detectives what kind of
7 deal he could get if he told them the full truth. (ECF No. 80-2 at
8 160-61; Ex. 254 (Tr. 29-30)). In total, the second interview, on
9 and off tape, was less than four hours. (*Id.* at 31).

10 Young was then transported to Clark County Detention Center.
11 While the booking paperwork was being completed, Young told an
12 officer that he wanted to speak with Thowsen. (Ex. 275 (Tr. 37-
13 38)). At 6:30 p.m., Young met with Thowsen and signed a consent to
14 submit to a Buccal swab, and the swab test was administered. (Ex.
15 253 (Tr. 42-43)). Thowsen and Young then had an unrecorded
16 conversation, which likely began at around 6:40 p.m. (*Id.* at 43-
17 44). Thowsen reminded Young that he had been advised of his rights
18 and asked if Young understood they still applied, and Young said
19 he did. (*Id.* at 48-49, 53-54).

20 At 7:55 p.m., the recorded interview began. (ECF No. 80-3).
21 At the beginning of the interview, Young acknowledged that he had
22 asked to speak with Thowsen because he wanted to tell the truth
23 about what happened, and that he understood his rights still
24 applied. Young then provided details about the murders and admitted
25 to his involvement. Toward the end of the interview, Young said he
26 was telling the truth because "the other guy said I was going to
27 die" and that made him think about his girlfriend and her baby and
28

1 the victims' families. (ECF No. 80-3 at 51-52).³ The interview
2 ended at 8:45 p.m. (*Id.*)

3 Thowsen testified that during the third conversation, the
4 tape recorder was never turned off except to switch the tapes from
5 Side A to Side B or insert another tape. (*Id.* at 37-38). During
6 Young's first trial, an expert had evaluated the tapes and found
7 that no alterations had been made nor had the tapes been tampered
8 with. (Ex. 253 (Tr. 35-36); Ex. 255 (Tr. 31-34)).

9 The detectives who testified at the evidentiary hearing
10 agreed that there were conversations with Young that were not
11 recorded on that day. However, they asserted that at no time, on
12 or off recording, did Young invoke his rights, and he was never
13 promised anything to make a statement. (Ex. 253 (Tr. 32-34); Ex.
14 254 (Tr. 28-30)); Ex. 255 (Tr. 55-56, 61-62)). In response to a
15 question by Young, Thowsen denied specifically that the first
16 interview ended because Young invoked his rights. (Ex. 253 (Tr.
17 123-24)). Thowsen denied coaching Young as to what to say or that
18 he should sound remorseful when doing so. (Ex. 253 (Tr. 71-74)).
19 Thowsen also denied that he or anyone else told Young he was going
20 to die or they were going to kill him. (*Id.* at 79-80).

21 Young waived his privilege against self-incrimination and
22 testified. Before he did so, the court asked Young to discuss his
23 decision with standby counsel (Ex. 255 (Tr. 98-99)). The State
24 advised standby counsel that at least one subject of Young's
25 potential testimony would open the door to questions about his
26 involvement in the crime. (*Id.* at 99-100). Following Young and
27 counsel's discussion, counsel told the court that he had advised

28 ³ Citation is to original page of document.

1 Young "until [he] was blue in the face ... not to take the stand.
2 That the only way he could go up there was with me wrapped around
3 his ankle, kicking and screaming." (*Id.* at 100). The court advised
4 Young that if he testified, he would be subject to cross-
5 examination and would have to answer the State's questions if they
6 were appropriate and legal. (*Id.* at 101). Young elected to testify.

7 According to Young, upon his arrest he was beaten up by five
8 or six detectives, and once in the interview room, his rights were
9 not properly explained to him, he was told he had to sign the card,
10 and he was told he had to talk because he was being investigated
11 for murder. (Ex. 255 (Tr. 103-05)). Young asserted that he told
12 the detectives that he did not want to talk, and that he wanted
13 counsel, several times, including at the end of the first
14 interview, but that the detectives ignored him. (*Id.* at 105-06,
15 110). Young asserted that while the tapes were being turned over,
16 Buczak told him he was going to die, that he was going to get the
17 death penalty, and that this coerced him into confessing. (*Id.* at
18 107). Young testified that before his third interview was recorded,
19 the detectives implied he would get a ten-year sentence, and they
20 told him how to sound, what to say and what not to say. (*Id.* at
21 111).

22 On cross-examination, Young refused to answer the State's
23 questions about whether he was in the Terra Linda house at the
24 time of the murders and how he came to know the details of the
25 murders that he provided in his confession. The court held the
26 questions were relevant and proper and directed Young several times
27 to answer or explain why he would not do so. When Young still
28 refused to answer, the State moved to strike his testimony. The

1 court explained to Young that the State was moving to strike his
2 testimony in its entirety because he refused to answer the State's
3 questions and gave Young an opportunity to be heard. The court
4 then struck Young's testimony in its entirety. (Ex. 255 (Tr. 140-
5 60)).

6 The trial court denied the motion to suppress, finding there
7 was no evidence to support Young's version of events and that Young
8 waived his *Miranda* rights and voluntarily provided his statements
9 to the detectives. (Ex. 266).

10 Trial thereafter commenced. At trial, the following relevant
11 evidence was presented.

12 On the night of August 13, 1998, Justin Perkins was at the
13 Terra Linda house until about 9 p.m. (Ex. 273 (Tr. 62, 65-67)). A
14 VCR and a PlayStation were in the house at the time. (*Id.* at 66-
15 67).

16 Nick Delucia lived next door to the Terra Linda home. (*Id.* at
17 78; 81-82). When he left for work around 1:30 a.m. on August 14,
18 1998, he observed two people in the front yard of the Terra Linda
19 home; one of them had a hose and was watering the front yard. (*Id.*
20 at 80).

21 Perkins returned to the house the next day around 6 p.m. (*Id.*
22 at 68). He found the front gate open and the door slightly ajar;
23 he also noticed that one of the cars belonging to the house was
24 parked in an unusual spot. (*Id.* at 69). Perkins walked through the
25 front door to find Jeff Biddle face down on the floor with his
26 hands duct-taped behind him. Blood was all around. (*Id.* at 73).
27 He then saw Tracey Gorringe and Matt Mowen, also duct-taped and
28

1 bloody. He then ran out the door and asked a neighbor to call 911.
2 *(Id.* at 73-74).

3 Shortly after, the authorities arrived at the home to find it
4 ransacked. (Ex. 273 (Tr. 104, 114-15, 149-65)). The bodies of
5 Biddle, Gorringe, and Mowen were found in the living room, and the
6 body of Talamantez was found in the dining room. (*Id.* at 155).
7 Several empty or mostly empty wallets were located. (*Id.* at 161).
8 A large number of coins was also found but no larger currency.
9 (*Id.* at 162). Prints on a box of Black and Mild cigars, which
10 Johnson was known to smoke, and DNA on cigarette butts recovered
11 from the scene, matched Johnson. (Ex. 273 (Tr. 143, 189-90); Ex.
12 276 (Tr. 39-40)). Young's DNA was not recovered from the scene.
13 (Ex. 276 (Tr. 40)).

14 Ace Hart testified that until July 1998, he was living with
15 two other people in a house on Everman Drive. (Ex. 273 (Tr. 118-
16 19)). Just before Hart moved out, Johnson, Young, and Johnson's
17 girlfriend began staying at the home in the master bedroom, and
18 they continued to do so after Hart moved out. (*Id.* at 120-25, 143-
19 44). When they moved into the home, the trio brought with them a
20 duffel bag. (*Id.* at 143-44). Hart testified that Young and Johnson
21 were best friends and were always together. (*Id.* at 125).

22 Hart testified that he was at the Everman house one day in
23 late July or early August, when Mowen came over and bragged about
24 how he had recently made \$10,000. (*Id.* at 126-28). Young and
25 Johnson were both there when he made the statement. (*Id.* at 126-
26 28).

27 On August 15, 1998, Hart went to the Everman house to retrieve
28 some belongings. (*Id.* at 129). There, he saw Young, Johnson and

1 Johnson's girlfriend watching the news. On the news was coverage
2 of the killings at the Terra Linda house. (*Id.* at 130). Johnson
3 and Young together told Hart they had committed the crime and
4 explained how they did it. They said they went to the house with
5 the intent to rob Mowen. When they arrived, Mowen was outside
6 watering the yard. Young and Johnson told Hart that they forced
7 Mowen inside. Another of the victims was inside the house when
8 Young and Johnson took Mowen in the house. Then another person
9 arrived in his vehicle later and was forced inside by Johnson.⁴
10 Then, they said, a "Mexican kid" came to the house. Young and
11 Johnson said the "Mexican kid" was "talking shit" so Young and
12 Johnson took him in a back room and shot him. Young then said that,
13 because "three other guys" -- Mowen, Biddle, and Gorringe⁵ -- were
14 in the house and had witnessed the murder, they had to kill them,
15 too. Hart testified that throughout the conversation, Young's
16 demeanor was calm and matter-of-fact. Young and Johnson said they
17 obtained only about \$200 but that they also took a Nintendo, a
18 VCR, and a pager. (*Id.* at 131-37). After the crime, Hart noticed
19 that there was a VCR and a PlayStation in the Everman house, which
20 had not been there previously. (*Id.* at 137, 141-42).

21 LaShawnya Wright testified that in August 1998, she was living
22 with Sikia Smith. (*Id.* at 168). Over that summer, she saw Smith,
23 Young, and Johnson together on a few occasions. (*Id.* at 170). Young
24 and Johnson were "homeboys." (*Id.* at 174).

25
26

⁴ Hart did not know which victim was already in the house and which
arrived a short time later.

27 ⁵ Hart did not identify the "other three" by name, but the evidence in
28 the record establishes that the "other three" were Mowen, Biddle, and
Gorringe.

1 On August 13, 1998, Wright was at the apartment with Smith
2 most of the day. (*Id.* at 172). Smith left about 10:30 or 11 p.m.
3 with Young and Johnson. (*Id.* at 172-73). He did not return home
4 until 1 p.m. the next day. When he did, he was carrying a VCR and
5 a Nintendo. (*Id.* at 174-75). Young and Johnson showed up about 10
6 minutes later. (*Id.* at 175). When Wright asked Smith where he had
7 been, he wouldn't tell her. (*Id.* at 176-77). He was acting a little
8 shaky and nervous. (*Id.* at 177). Johnson gave Smith \$20 for the
9 VCR. (*Id.* at 177-78). Young then asked Smith if he could have the
10 Nintendo. (*Id.* at 178-79).

11 Three or four days later, Wright was at the Desert Hills Motel
12 with Smith and a few other persons, including Young. (*Id.* at 179-
13 80). Wright heard Young talking with other people, including Smith,
14 about his and Johnson's involvement in the murders. (*Id.* at 180-
15 82).

16 Young's former girlfriend, Elizabeth Nevarez, also testified.
17 During the summer of 1998, while she and Young were together,
18 Nevarez kept a calendar. The calendar reflected that Nevarez saw
19 Young on August 13, 1998, and August 14, 1998, and that Young was
20 in California from August 22, 1998, to August 30, 1998. (Ex. 275
21 (Tr. 107-14)). At some point before Young's arrest, Nevarez and
22 Young were watching the news and saw that Johnson had been
23 arrested; in response to this, Young said he had to go. (*Id.* at
24 115). After his arrest, Young told Nevarez that he had participated
25 in the murders by tying up the victims and acting as the lookout.
26 (*Id.*) He told her his only intention that night was to rob, not to
27 kill. (*Id.* at 117).

28

1 On August 17, 1998, two people who identified themselves as
2 Donte Fletch and Red, which was Young's alias, were pulled over
3 for speeding. During the stop, they both fled and escaped. (Ex.
4 273 (Tr. 191-98)). The officer who pulled them over searched the
5 car and found under the passenger seat a loaded sawed off 30
6 carbine rifle. (*Id.* at 199-20). A few days later, the officer
7 learned that the two men he had pulled over were Johnson and Young.
8 (*Id.* at 201-02).

9 The Everman house, where Young was staying, was searched.
10 There, authorities found a VCR which they believed belonged to
11 Mowen, a PlayStation, a duffel bag with a roll of duct tape on
12 top, jeans on which was Gorringe's and Johnson's blood, and a
13 Rueger .22 caliber semi automatic rifle. (Ex. 275 (Tr. 75-80, 99);
14 (Ex. 276 (Tr. 36-37); Ex. 273 (Tr. 143-44)). A pager was also
15 recovered, buried in the backyard. (Ex. 275 (Tr. 81-82); Ex. 273
16 (Tr. at 138-39)). Pants and shoes believed to belong to Young were
17 also found in the Everman house. (Ex. 281 (Tr. 123)). The murder
18 weapon was never recovered. (Ex. 281 (Tr. 140)).

19 The jury found Young guilty of all fourteen counts. (Ex. 287).
20 Young was sentenced on each of the four murder counts to a term of
21 life with the possibility of parole after twenty years, plus a
22 consecutive term of life with the possibility of parole after
23 twenty years, on each of the kidnapping counts to a term of life
24 without the possibility of parole, plus a consecutive term of life
25 without the possibility of parole, on each of the four robbery
26 counts to a term of 180 months with the possibility of parole after
27 forty months, plus a consecutive term of 180 months with the
28 possibility of parole after forty months, on the conspiracy count

1 to a term of 120 months with the possibility of parole after 24
2 months, and on the burglary count to a term of 180 months with the
3 possibility of parole after forty months, all terms consecutive.
4 Judgment of conviction was entered on August 3, 2006. (Ex. 310).
5 Young did not file a direct appeal.

6 On December 12, 2006, Young filed a state postconviction
7 petition, which was dismissed as unverified and not in compliance
8 with the court's form. (Exs. 318 & 325). Before it was dismissed,
9 Young filed a second petition on February 27, 2007. (Ex. 324).
10 That petition was denied on December 3, 2007, on the grounds that
11 the claims could have been raised on direct appeal. (Ex. 336).
12 Young did not appeal either order.

13 In August 2008, Young filed a "motion to appoint counsel to
14 my direct appeal." (Ex. 338). The motion was granted on November
15 9, 2008, and Lisa Rasmussen was appointed "for the purpose of
16 filing either a direct appeal or a petition for post-conviction
17 relief, whichever she deems appropriate under the circumstances."
18 (Ex. 341).

19 Then, in March 2014, Young filed a motion for appointment of
20 new counsel. (Ex. 343). The court denied the motion. (Ex. 346).
21 Although Young attempted to appeal, the appeal was dismissed for
22 lack of jurisdiction. (Exs. 347 & 351).

23 Then, on September 22, 2015, Young filed another state
24 postconviction petition for habeas relief. (Pet. Ex. 52). Young
25 proceeded to file several amended petitions. (See Exs. 357, 358,
26 361, 366, 367, 370, 374, 376,⁶ 396, 405, 407, 424, 425, 431, 440,
27

28 ⁶ Although large segments of Exhibit 376 are too dark to be read, this
is also true of the document on file with the Nevada Supreme Court, which

1 449, 458).⁷ On appeal, the petitions were denied as untimely,
2 successive, and due to laches. (Exs. 423, 427, 441, 461).

3 On February 14, 2017, Young filed his original petition for
4 federal habeas relief. (ECF No. 1-1 at 2). He later filed a first
5 amended petition. (ECF No. 7). Counsel was appointed and filed a
6 second amended petition. (ECF Nos. 20 & 32). Ground One of the
7 second amended petition asserted that the trial court violated
8 Young's rights by denying the motion to suppress because he was
9 not properly advised of his *Miranda* rights and his confession was
10 involuntary. (*Id.* at 8-17). Ground Two asserted that the trial
11 court violated Young's rights by failing to consider that he could
12 not have waived his *Miranda* rights because he was incompetent to
13 do so. (*Id.* at 17-37).

14 Respondents moved to dismiss the second amended petition as
15 untimely, procedurally defaulted, and unexhausted in part. Young,
16 while admitting the petition was untimely on its face, asserted
17 entitlement to equitable tolling on the basis of mental impairment
18 and ineffective assistance of postconviction counsel. Young also
19 acknowledged that Ground One of the petition was procedurally
20 defaulted but asserted cause based on the same mental impairment.⁸

21

22 this court ascertains by taking judicial notice of that court's docket.
23 See <http://caseinfo.nvsupremecourt.us/public/caseView.do?csID=37840>
24 (last accessed Oct. 3, 2019). The legibility does not impair the court's
25 review of the document, however, as the obscured pages appear legibly
elsewhere in the record.

26 ⁷ One of the petitions that appears on the record was stricken following
27 a motion by the State. (See Exs. 363, 389 & 397).

28 ⁸ Young also asserted cause for his default based on the ineffective
assistance of postconviction counsel under *Martinez v. Ryan*, 566 U.S. 1
2012), but the court held that *Martinez* could not save Ground One
because Ground One is a claim of substantive trial court error.

1 On October 15, 2019, this court entered an order finding the
2 petition untimely on its face, Ground One procedurally defaulted,
3 and Ground Two unexhausted. (ECF No. 66). Due to the complexity of
4 Young's claim of mental impairment during the relevant time
5 periods, the court deferred a determination of whether Young was
6 entitled to equitable tolling or could establish cause for the
7 procedural default until after it had an opportunity to consider
8 the merits of Young's claims. The court directed Young to elect
9 how he would like to proceed on what, at that time, was a mixed
10 petition.

11 On November 4, 2019, Young elected to abandon his unexhausted
12 claim. (ECF No. 67). The court then entered an order dismissing
13 Ground Two and directing respondents to file an answer. (ECF No.
14 68).

15 "Where it is clear that deciding the merits of a claim will
16 prove to be less complicated and time-consuming than adjudicating
17 the issue of procedural default, a court may exercise discretion
18 in its management of the case to reject the claims on their merits
19 and decline to engage in a lengthy and involved cause and prejudice
20 analysis." *Carter v. Chappell*, 2013 WL 1120657, at *37 (S.D. Cal.
21 Mar. 18, 2013), *aff'd sub nom. Carter v. Davis*, 946 F.3d 489 (9th
22 Cir. 2019) (citing *Lambrix v. Singletary*, 520 U.S. 518, 525 (1997));
23 *Franklin v. Johnson*, 290 F.3d 1223, 1232 (9th Cir. 2002). The
24 procedural issues in this case involve a complex claim of mental
25 impairment. Therefore, the court now determines that a decision on
26 the merits of Young's substantive claim is less complex than
27 determining whether Young is entitled to equitable tolling or can
28 establish cause for procedural default with respect to Ground One.

1 **II. Analysis**

2 In Ground One, Young asserts the trial court's failure to
3 suppress his confession was a violation of his *Miranda* rights and
4 his right against self-incrimination and to due process. (ECF No.
5 32 at 8). Young asserts that his confession was taken in violation
6 of his *Miranda* rights and was involuntary.

7 Respondents answer that the trial court's finding that Young
8 voluntarily waived his right to counsel and agreed to speak to
9 detectives was not clearly erroneous. Moreover, respondents argue
10 that the evidence against Young was overwhelming, so any error was
11 harmless.

12 Young replies that his mental health limitations precluded
13 him from adequately developing the state court factual record on
14 this claim and, thus, the state court's factual findings should
15 not be entitled to deference. He further argues that his confession
16 was strong evidence, so despite the other evidence of his guilt,
17 it cannot be said with confidence that the outcome of the trial
18 would have been the same even if the confession had not been
19 admitted.

20 *Miranda v. Arizona*, 384 U.S. 436 (1966) requires that before
21 a person can be subjected to custodial interrogation, they must be
22 notified that they have the right to remain silent and the right
23 to the presence of an attorney. *Berghuis v. Thompkins*, 560 U.S.
24 370, 380 (2010). Interrogation must cease once a defendant
25 unambiguously invokes his rights. *Id.* at 382-83.

26 A statement made during custodial interrogation is admissible
27 only where the defendant knowingly and voluntarily waived his
28 rights under *Miranda*. *Id.* at 381-82. A waiver must be "voluntary

1 in the sense that it was the product of a free and deliberate
2 choice rather than intimidation, coercion, or deception, and made
3 with a full awareness of both the nature of the right being
4 abandoned and the consequences of the decision to abandon it." *Id.*
5 at 382-83 (internal quotation marks omitted).

6 "A confession is involuntary if it is not "'the product of a
7 rational intellect and a free will." *Brown v. Horell*, 644 F.3d
8 969, 979 (9th Cir. 2011). Whether a confession or waiver is
9 involuntary is judged under the "totality of the circumstances."
10 *Withrow v. Williams*, 507 U.S. 680, 693 (1993). "The factors to be
11 considered include the degree of police coercion; the length,
12 location, and continuity of the interrogation; and the defendant's
13 maturity, education, physical condition, mental health, and age."
14 *Brown*, 644 F.3d at 979.

15 The admission of an involuntary confession at trial violates
16 a criminal defendant's due process rights under the Fourteenth
17 Amendment. *Lego v. Twomey*, 404 U.S. 477, 483 (1972). That said, a
18 petitioner is entitled to relief only if the admission of the
19 confession caused him actual prejudice - that is, that it had a
20 "substantial and injurious effect" on the jury's verdict. *Brecht*
21 v. *Abrahamson*, 507 U.S. 619, 637 (1993).

22 Young asserts that his rights were not properly explained to
23 him, he was forced to sign the *Miranda* card, and he was told that
24 he had to talk because he was being investigated for murder. He
25 asserts that "after several hours," (ECF No. 32 at 10), the first
26 interview ended when he invoked his right to counsel. Young argues
27 that this doesn't appear in any of the recordings because the side
28 of the tape on which he invoked his rights has been irretrievably

1 lost. Young asserts that before the second interview, a new set of
2 detectives questioned him un-recorded for more than 30 minutes,
3 and that during this period they badgered and threatened him to
4 tell the truth. Then, at the second interview, another set of
5 detectives interviewed him and Young asserts they did not remind
6 him of his rights before doing so. Young asserts that at the end
7 of the second interview, he invoked his right to counsel. At that
8 point, he argues, it had been more than eight hours during which
9 he had been badgered, threatened, and deprived of food and water.
10 Young admits that he asked to speak with detectives after being
11 transported to CCDC, but he asserts he was not readvised of his
12 rights before being interviewed again. He asserts that he was
13 promised a lenient sentence if he cooperated, and it was this
14 promise, in combination with the earlier deprivations of food and
15 water, the length of the interrogations, his youth and the fact he
16 had never been in serious trouble before, his mental health issues,
17 and the violence of his arrest that caused him to confess. In all,
18 Young asserts he invoked his right to counsel at least twice, and
19 that the officers ignored his requests.

20 In denying Young's motion to suppress, the trial court ruled
21 that there was no evidence to support Young's contention that he
22 had invoked his right to remain silent or his right to counsel.
23 (Ex. 266 at 3).⁹ The court held that that the evidence established
24 Young was advised of his *Miranda* rights and that, after he was
25 transported to CCDC, he asked to speak with the detectives. The
26 court further held that Young's confession to detectives was made
27 after he had been reminded that his *Miranda* rights still applied

28 ⁹ Citation is to original page of document.

1 and that Young confessed to the crime voluntarily in order to "tell
2 the truth" and was not coerced or under duress. (Ex. 266).

3 Under 28 U.S.C. § 2254(e)(1), state court factual findings
4 are presumed to be correct unless rebutted by clear and convincing
5 evidence. The petitioner bears the burden of proving by a
6 preponderance of the evidence that he is entitled to habeas relief.
7 *Cullen v. Pinholster*, 563 U.S. 170, 181 (2011). Under § 2254(e)(2),
8 the court shall not hold an evidentiary hearing on a claim

9 "[i]f the applicant ... failed to develop the factual basis
10 of a claim in State court proceedings ... unless the
11 applicant shows that -- (A) the claim relies on ... (ii)
12 a factual predicate that could not have been previously
13 discovered through the exercise of due diligence; and
14 (B) the facts underlying the claim would be sufficient
15 to establish by clear and convincing evidence that but
16 for constitutional error, no reasonable factfinder would
17 have found the applicant guilty of the underlying
18 offense.

19 The court "may not grant in this case an evidentiary hearing if
20 [the petitioner] 'has failed to develop the factual basis of a
21 claim in State court proceedings.'" *Bragg v. Galaza*, 242 F.3d 1082,
22 1089 (9th Cir.), *opinion amended on denial of rehg*, 253 F.3d 1150
23 (9th Cir. 2001).

24 To the extent that the state court's factual findings are
25 challenged, the "unreasonable determination of fact" clause of §
26 2254(d)(2) controls on federal habeas review. *E.g.*, *Lambert v.*
27 *Blodgett*, 393 F.3d 943, 972 (9th Cir. 2004). This clause requires
28 that the federal courts "must be particularly deferential" to state
court factual determinations. *Id.* The governing standard is not
satisfied by a showing merely that the state court finding was
"clearly erroneous." *Id.* at 973. Rather, AEDPA requires
substantially more deference:

1 [I]n concluding that a state-court finding is
2 unsupported by substantial evidence in the state-court
3 record, it is not enough that we would reverse in similar
4 circumstances if this were an appeal from a district
court decision. Rather, we must be convinced that an
appellate panel, applying the normal standards of
appellate review, could not reasonably conclude that the
finding is supported by the record.

5 *Taylor v. Maddox*, 366 F.3d 992, 1000 (9th Cir. 2004).

6 Following review of the record, including the transcripts of
7 the evidentiary hearing, the trial, and Young's interviews, the
8 court concludes that the state courts' factual findings were not
9 clearly erroneous. Young's contention that he was not properly
10 advised of his *Miranda* rights and/or that his confession was not
11 voluntary is not supported by the record because that evidence was
12 stricken. The evidence that is part of the record supports the
13 conclusion that Young was given his *Miranda* rights and reminded
14 that the rights still applied at the beginning of each interview,
15 and that he did not invoke his rights to counsel or to remain
16 silent at any time during the interviews. A change in location and
17 interrogator does not necessarily require re-administration of
18 *Miranda* warnings, particularly where one interrogator remained
19 constant. *United States v. Andaverde*, 64 F.3d 1305, 1312-13 (9th
20 Cir. 1995) ("Certainly, the two interrogations were so
21 interconnected in time, subject matter, and by [one officer's]
22 presence that [the defendant] must have known that his rights had
23 not materially changed simply because he had been moved into a
24 different room and faced a new interrogator.") There is
25 additionally no bright-line rule as to the amount of time a *Miranda*
26 warning remains valid, but warnings have been found still to be
27 valid even for interviews conducted the next day. See *United States*
28

1 *v. Rodriguez-Preciado*, 399 F.3d 1118, 1128-30 (9th Cir.), amended,
2 416 F.3d 939 (9th Cir. 2005). While here the interviewers, topic,
3 and, at one point, location changed, the interviews occurred close
4 in time in a single day over a nine-hour period, Detective Thowsen
5 was present at all of the interviews, and Young was continuously
6 in custody the entire time. On several occasions, Young was asked
7 if he understood his rights, and he indicated that he did. Thus,
8 “there were no intervening events which might have given [Young]
9 the impression that his rights had changed in a material way.”
10 *Rodriguez-Preciado*, 399 F.3d at 1129.

11 In addition, none of the record evidence supports a finding
12 that Young was coerced into confessing. It was Young himself who
13 initiated the last discussion, in which he confessed, with a stated
14 desire to tell the truth. The transcript reflects that it was Young
15 who sought to obtain a deal from the State. Nothing in the
16 transcripts of any of Young’s interviews suggest Young’s
17 confession was involuntary.

18 Young agrees that state court factual findings are generally
19 entitled to deference, but he points to two exceptions: (1) where
20 the state court does not allow the defendant to present evidence;
21 and (2) where the state court fails to consider and weigh relevant
22 evidence. *Taylor*, 366 F.3d at 1001. Young asserts that by allowing
23 him to represent himself, despite the fact that he should not have
24 been allowed to do so, and then striking his testimony, the state
25 court failed to allow and consider relevant evidence on Young’s
26 claim.

27 The court does not find Young’s contention persuasive. The
28 state court did allow Young to present evidence, but ultimately

1 struck the evidence because Young refused to submit to cross
2 examination. This was a proper exercise of the court's discretion.
3 *United States v. Panza*, 612 F.2d 432, 438 (9th Cir. 1979)
4 ("Historically the trial court's discretion has included the power
5 to strike the testimony of a witness who improperly refuses to
6 answer questions on cross-examination."); see also *Williams v.*
7 *Borg*, 139 F.3d 737, 740-43 (9th Cir. 1998).

8 Even if the state court findings were not entitled to
9 deference and Young's testimony was made a part of the record and
10 credited by the court, Young still would not be entitled to relief.
11 Relief is available "only if the ... court ha[d] grave doubt about
12 whether [the admission of his confession] had substantial and
13 injurious effect or influence in determining the jury's verdict."
14 *Davis v. Ayala*, 135 S. Ct. 2187, 2197-98, (2015) (internal
15 quotation marks omitted). The error must be harmless beyond a
16 reasonable doubt. *Arizona v. Fulminante*, 499 U.S. 279, 295 (1991).

17 The court must exercise extreme caution before determining
18 admission of a full confession was harmless. *Id.* at 296. Here, the
19 evidence of Young's guilt was overwhelming. Three separate
20 witnesses testified that Young confessed to his involvement in the
21 murders. To Hart, Young provided a detailed description of the
22 particulars of the murders. These details were also corroborated
23 by the physical evidence recovered from the Terra Linda and Everman
24 homes and by the testimony of the other witnesses. In light of
25 this evidence, the court concludes that even if the admission of
26 the confession was in error, Young would not be entitled to relief,
27 because any such error was harmless beyond a reasonable doubt.

28

1 As Young is not entitled to relief on his sole remaining
2 claim, the petition will be denied.

3 **III. Motion for Evidentiary Hearing**

4 Young has filed a motion for evidentiary hearing to develop
5 his claim of mental illness, which relates to both the question of
6 equitable tolling and to cause for his procedural default. Because
7 the court has elected to resolve the petition on the merits, it
8 need not reach these procedural issues, and therefore an
9 evidentiary hearing is not warranted. The motion for evidentiary
10 hearing is therefore DENIED.

11 **IV. Certificate of Appealability**

12 In order to proceed with an appeal, Young must receive a
13 certificate of appealability. 28 U.S.C. § 2253(c)(1); Fed. R. App.
14 P. 22; 9th Cir. R. 22-1; *Allen v. Ornoski*, 435 F.3d 946, 950-951
15 (9th Cir. 2006); see also *United States v. Mikels*, 236 F.3d 550,
16 551-52 (9th Cir. 2001). Generally, a petitioner must make "a
17 substantial showing of the denial of a constitutional right" to
18 warrant a certificate of appealability. *Allen*, 435 F.3d at 951; 28
19 U.S.C. § 2253(c)(2); *Slack v. McDaniel*, 529 U.S. 473, 483-84
20 (2000). "The petitioner must demonstrate that reasonable jurists
21 would find the district court's assessment of the constitutional
22 claims debatable or wrong." *Allen*, 435 F.3d at 951 (quoting *Slack*,
23 529 U.S. at 484). In order to meet this threshold inquiry, Young
24 has the burden of demonstrating that the issues are debatable among
25 jurists of reason; that a court could resolve the issues
26 differently; or that the questions are adequate to deserve
27 encouragement to proceed further. *Id.*

28

1 The court has considered the issues raised by Young, with
2 respect to whether they satisfy the standard for issuance of a
3 certificate of appealability and determines that none meet that
4 standard. Accordingly, Young will be denied a certificate of
5 appealability.

6 || v. Conclusion

7 In accordance with the foregoing, **IT IS HEREBY ORDERED** that
8 the second amended petition (ECF No. 32) is DENIED, and this action
9 is DISMISSED WITH PREJUDICE.

10 IT IS FURTHER ORDERED that Young is DENIED a certificate of
11 appealability.

12 IT IS FURTHER ORDERED that Young's motion for evidentiary
13 hearing (ECF No. 77) is DENIED.

14 The Clerk of Court shall enter final judgment accordingly and
15 CLOSE this case.

16 IT IS SO ORDERED.

17 DATED: This 31st day of March, 2020.

Howard D McKibben

UNITED STATES DISTRICT JUDGE